

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

GODFREY OSUNWUSI,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 1:19-cv-03956-JRS-MPB
	)	
STATE OF INDIANA, et al.	)	
	)	
Respondents.	)	

**Order Dismissing Petition for a Writ of Habeas Corpus<sup>1</sup>**

Petitioner Godfrey Osunwusi has filed this petition for a writ of habeas corpus. The respondent moves to dismiss arguing that Mr. Osunwusi has not exhausted his state court remedies. Mr. Osunwusi has not replied. For the following reasons, the petition is dismissed without prejudice.

**I. Factual Background**

On September 5, 2019, an Indiana jury found Mr. Osunwusi guilty of intimidation. Dkt. 21-1, p. 12. The trial court sentenced Mr. Osunwusi to four years and three months. *Id.*, p. 14. Mr. Osunwusi filed his petition for a writ of habeas corpus in this court on September 19, 2019. On October 22, 2019, Mr. Osunwusi filed a notice of appeal in the Indiana Court of Appeals Dkt. 21-2, p. 2. Mr. Osunwusi filed his appellate brief on February 14, 2020. *Osunwusi v. State*, 19A-CR-02461.

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<sup>1</sup> This petition was treated as a petition for a writ of habeas corpus under 28 U.S.C. § 2241 when it was filed. But, as discussed below, the record reflects that Mr. Osunwusi filed it after he was convicted in state court. Accordingly, it is more properly treated as a challenge to his conviction under 28 U.S.C. § 2254.

## **II. Discussion**

The respondent argues that Mr. Osunwusi's petition should be dismissed without prejudice because he failed to exhaust his state court remedies before filing this petition. Habeas petitioners must exhaust state court remedies before seeking relief in habeas corpus. 28 U.S.C. § 2254(b)(1)(A). To satisfy the statutory exhaustion requirement, a petitioner must "fairly present his federal claim to the state courts through one complete round of state court review, whether on direct appeal or in post-conviction proceedings." *Whatley v. Zatecky*, 833 F.3d 762, 770-71 (7th Cir. 2016). Because Mr. Osunwusi's direct appeal is pending, he has not yet exhausted his state court remedies and this Court cannot consider them. 28 U.S.C. § 2254(b)(1). Because his direct appeal is pending, the statute of limitations for filing a habeas petition in this Court has not yet started to run. *See* 28 U.S.C. § 2244(d)(1). It is therefore not necessary to stay this case to allow Mr. Osunwusi to pursue his state court remedies. Accordingly, Mr. Osunwusi's petition is dismissed.

## **III. Certificate of Appealability**

"A state prisoner whose petition for a writ of habeas corpus is denied by a federal district court does not enjoy an absolute right to appeal." *Buck v. Davis*, 137 S. Ct. 759, 773 (2017). Instead, a state prisoner must first obtain a certificate of appealability. *See* 28 U.S.C. §2253(c)(1). "A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

Where a claim is resolved on procedural grounds (such as failure to exhaust), a certificate of appealability should issue only if reasonable jurists could disagree about the merits of the underlying constitutional claim *and* about whether the procedural ruling was correct. *Flores-Ramirez v. Foster*, 811 F.3d 861, 865 (7th Cir. 2016).

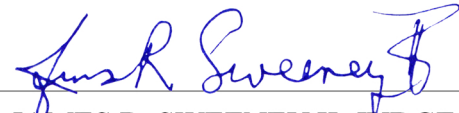
Here, no reasonable jurist could disagree that Mr. Osunwusi has failed to exhaust his available state court remedies. Therefore, pursuant to Rule 11(a) of the *Rules Governing Section 2254 Proceedings in the United States District Courts*, a certificate of appealability is **denied**.

#### **IV. Conclusion**

The claims Mr. Osunwusi presented in his habeas petition have not been fully exhausted in state court. The respondent's motion to dismiss, dkt. [21], is therefore **GRANTED**, and this action is **DISMISSED without prejudice**. A certificate of appealability is also denied. Judgment consistent with this Order shall now issue.

**IT IS SO ORDERED.**

Date: 3/9/2020

  
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JAMES R. SWEENEY II, JUDGE  
United States District Court  
Southern District of Indiana

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